

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 12, 2009, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Ray Dwyer  
Robert Bartholomew  
Walter Schmidt  
Nancy M. Bonniwell  
Linda Weber (alternate)

**BOARD MEMBERS ABSENT:** Tom Day

**SECRETARY TO THE BOARD:** Nancy M. Bonniwell

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Mary E. Finet, Senior Land Use Specialist  
Peggy Tilley, Senior Land Use Specialist  
Susan Van Vleet, BA09:027, petitioner  
Bruce Hawkins, BA09:027, husband of the petitioner  
Michael and Judythe Giordano, BA09:027, neighbors  
Ralph and Marie Ann Seifert, BA09:027, neighbors  
Gordon and Carole Housfeld, BA09:027, neighbors  
Matt Brown, BA09:025, petitioner  
Jeff Baum, BA09:025, co-owner  
John and Barb Bendall, BA09:014, petitioners  
Rob Millen, BA09:014, contractor  
Matt Heaton, BA09:0028, architect  
Joe and Linda Opitz, BA09:029, petitioners  
Tom Hignite, Miracle Homes Inc., BA09:029, contractor  
David Hignite, Miracle Homes, Inc., BA09:029, contractor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Bartholomew                      *I move to approve the Summary of the Meeting of July 8, 2009.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

**NEW BUSINESS:**

**BA09:027 SUSAN VAN VLEET:**

Mr. Bartholomew                      *I make a motion to approve the request, in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report and on the record at the meeting, with the following modifications to the recommended conditions:*

*Condition No. 1 shall be revised to read "The new garage must be located at least 8 ft. from the east lot line, with overhangs not to exceed 2 ft. in width."*

*Condition No. 3 shall be revised to read "The new garage shall be no wider than 24 ft., as measured to the outer edges of the walls, with a footprint not to exceed 528 sq. ft."*

*Condition No. 8 shall be revised to read "A detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the new garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 7."*

*Condition No. 10 shall be revised to read "The existing garage must be removed prior to the issuance of a Zoning Permit for the new garage."*

The motion was seconded by Mr. Dwyer and carried with four yes votes from Mr. Dwyer, Mr. Bartholomew, Ms. Bonniwell and Ms. Weber. Mr. Schmidt voted no.

The Planning and Zoning Division staff's recommendation was for **approval** of variances from the offset, floor area ratio, and open space requirements, as well a special exception from the accessory building floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a modified version of the proposed detached garage, located in a slightly modified location, subject to the following conditions:

1. The new garage must be located at least 25 ft. from the edge of the 50 ft. wide platted road right-of-way of Beaver Lake Road and at least 8 ft. from the east lot line, with overhangs not to exceed 2 ft. in width.
2. The new garage must be located at least 10 ft. from the residence, as measured to the outer edges of the overhangs. *Note: A minimum offset distance of 10 ft. between a residence and a detached accessory building is an Ordinance requirement.*
3. The new garage shall be no wider than 24 ft., as measured to the outer edges of the walls, with a footprint not to exceed 572 sq. ft.

4. The new garage must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
5. The new garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
6. Prior to the issuance of a Zoning Permit for the garage, a complete set of plans for the new garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a Zoning Permit for the garage, a Plat of Survey showing the staked-out location of the new garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the new garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 7.
9. A "preliminary site evaluation" of the proposed garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a Zoning Permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed garage, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
10. The existing garage must be removed within six (6) months of the date of issuance of a Zoning Permit for the new garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A

hardship exists with respect to open space, since it is not possible to achieve the minimum required open space of 15,000 sq. ft. on a parcel that is only 12,760 sq. ft. in area. Conformance with the floor area ratio requirement would also be unnecessarily burdensome, as it would allow only a 140 sq. ft. accessory building, which would not permit even the replacement of the existing one-car garage with a new one-car garage of the same size. Conformance with the required minimum offset distance of 13.83 ft. from the side lot line would not be as aesthetically appealing as a garage located, as proposed, 8 ft. from the east lot line and it could preclude the construction of a side-entry garage and compromise a mature oak tree.

Since Beaver Lake Road is a heavily traveled road that connects two County Trunk Highways, a side-entry garage on the subject property is desirable and would provide safer ingress and egress from the property. Therefore, granting the requested offset variance, which will facilitate the construction of a side-entry garage and help to preserve a mature oak tree, is in the public interest. In addition, requiring a slightly greater road setback than proposed and a slightly narrower garage than proposed, will also help to preserve the mature oak tree. Therefore, the approval of variances from the offset, floor area ratio, and open space requirements and of a special exception from the accessory building floor area ratio requirement to permit the construction of a replacement garage, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA09:025 MATT BROWN:**

Mr. Schmidt

*I make a motion to approve the request, in accordance with the staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with the following modifications to the recommended conditions and the reasons stated in the Staff Report:*

*Conditions No. 1 and No. 2 shall be removed.*

*Condition No. 3 shall be modified to read as follows, "The total floor area on the property shall not exceed 2,529 sq. ft. (approximately 31.23% floor area ratio) as proposed. All covered decks, covered patios, covered porches and entryways shall be included in the total floor area."*

*Condition No. 4 shall be modified to read as follows, "The footprint of the proposed residence and attached or detached garage on the property shall not exceed 1,250 sq. ft. in size. The total floor area of the residence (first and second floors) shall be at least 1,300 sq. ft. in size. The property shall have garage that is at least 400 sq. ft. in size. The garage may be either attached or detached garage."*

*The last sentence of Condition No. 15 shall be modified to read as follows, "No grading or filling activities will be permitted within the floodplain."*

*The reasons for the motion shall be as follows:*

*Due to the small size of the lot, it is appropriate to grant a special exception from the minimum floor area requirements to allow the first*

*floor of the residence to be slightly smaller than the minimum requirements. The overall square footage of the residence will comply with the overall minimum floor area requirement of 1,300 sq. ft.*

*A hardship exists with respect to open space, since it is not possible to achieve the minimum required open space of 10,500 sq. ft. on a lot that is only approximately 8,098 sq. ft. in area. Conformance with the maximum permitted floor area ratio of 19.5% would be unnecessarily burdensome, as it would allow only 1,579 sq. ft. for a new residence and garage. This would be substantially smaller than the existing residence and detached garage. Due to the high groundwater in the area, and the basement problems that the existing home has had, the petitioner is not proposing to construct a basement. This will limit the amount of storage space on the property. Therefore, it is reasonable to allow some relief from the floor area ratio and open space requirements of the Ordinance, to allow more square footage to accommodate additional storage space.*

*Due to the limitations of the floodplain on the north side of the property and the overhead wire on the south side of the property, it would be unnecessarily burdensome on the petitioner to comply with the floodplain setback requirements. If the floodplain setback were imposed a building could only be constructed that is approximately 30 ft. deep by 30 ft. wide. This would not allow room for an attached garage nor a deck or patio. As conditioned, the new residence and a deck or patio would be located no closer to the floodplain than the existing residence and deck.*

*It should be noted that due to the location of the overhead wire, the petitioners may consider constructing a detached garage rather than the attached garage. If the road right-of-way width of Jaeckles Dr. is reduced by the Town Plan Commission and the Waukesha County Park and Planning Commission, there should be enough room for the construction of a detached garage while conforming with the required road setback and the setback from the overhead line.*

*The approval of this request with recommended conditions will allow the owner to use the property for the permitted purpose and will permit the construction of a residence and an attached garage or a detached garage that will be appropriately sized for the lot, and will not be detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, as recommended, is in conformance with the purpose and intent of the Ordinance.*

*Furthermore, it would be a hardship to require the petitioners to remove the non-conforming boathouse due to the lack of storage on*

*the property and the cost of the required restoration of the lake frontage that isn't otherwise disturbed.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the floor area ratio, open space, and floodplain setback requirements as well as **approval** of a special exception from the minimum floor area requirements to allow the construction of a single-family residence and garage, subject to the following conditions:

1. The existing non-conforming wet boathouse must be removed from the property and the shoreline must be properly restored prior to the issuance of a Zoning Permit for the new home construction.
2. The necessary permits from the Wisconsin Department of Natural Resources and the Waukesha County Department of Parks and Land use must be obtained prior to the removal of the boathouse and the restoration of the shoreline.
3. The total floor area on the property shall not exceed 2,060 sq. ft. (approximately 25.4% floor area ratio). All covered decks, patios, covered porches and entryways shall be included in the total floor area.
4. The footprint of the structures on the property shall not exceed 1,250 sq. ft. in size. The total floor area of the residence (first and second floors) shall be at least 1,300 sq. ft. in size. The property shall have a garage that is at least 400 sq. ft. in size. The garage may be either attached or detached.
5. The residence and attached garage or detached garage and all other appurtenances must not exceed two stories, as viewed from the lake and the road. All height requirements of the Ordinance must be complied with.
6. The proposed residence, attached garage or detached garage, and any proposed decks or patios must comply with the road setback, offset, and shore setback requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
7. The proposed residence and attached garage or detached garage shall be located at least 52 ft. from the 100-year floodplain. Any proposed decks or patios shall be at least 42 ft. from the 100-year floodplain.
8. The proposed residence and attached garage or detached garage, shall be located at least 10 ft. from the overhead wire identified on the plat of survey unless a lesser setback is authorized by the appropriate utility companies.
9. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

10. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence, attached garage or detached garage, and any proposed decks or patios, as well as any proposed sidewalks, stairs and walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must show the correct location of the 100-year floodplain of 875.1 ft. amsl.
11. The first floor of the structure (residence and attached garage) must be placed at least two (2) ft. above the 100-year floodplain elevation, at the flood protection elevation of 877.1 ft. amsl. If a detached garage is proposed instead of the attached garage, it must be located outside of the 100-year floodplain but does not have to be two (2) ft. above.
12. No basement shall be permitted.
13. If a crawl space is proposed, soil boring down to the proposed crawl space elevation must be done and the soil test results must be provided to Planning and Zoning Division staff to determine compliance with Section 3(d)(10) of the Waukesha County Shoreland and Floodland Protection Ordinance, prior to the issuance of a Zoning Permit for the proposed residence. It should be noted that if a slab on grade is proposed, a soil boring will not be required.
14. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 10.
15. No change in the existing topography or drainage courses will be allowed, which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to (1) vertical. Further, no fill or alterations will be permitted under any circumstances, which will alter the drainage or topography in a way that will adversely affect the surrounding lands. No grading or filling activities will be permitted within the floodplain, other than those association with the removal of the boathouse and the restoration of the shoreline.
16. Upon completion of the foundations of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Oconomowoc Building Inspector and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff, prior to proceeding with construction.

17. The fill area and the fill around the residence shall be in accordance with the final Grading Plan, to be approved by the Town Engineer. No floodplain grading or filling is permitted.
18. Upon completion of the project, an "As-Built" Grading Plan, showing the finished grades on the property must be prepared by a registered land surveyor and submitted to the Town Engineer and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff. If that "as-built" Grading Plan indicates that the property has not been filled and graded in accordance with the approved Grading Plan, the petitioners shall make whatever changes are necessary to bring the property into conformance with the approved Grading Plan.
19. No retaining walls are permitted herein.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Due to the small size of the lot, it is appropriate to grant a special exception from the minimum floor area requirements to allow the first floor of the residence to be slightly smaller than the minimum requirements. The overall square footage of the residence will comply with the overall minimum floor area requirement of 1,300 sq. ft.

A hardship exists with respect to open space, since it is not possible to achieve the minimum required open space of 10,500 sq. ft. on a lot that is only approximately 8,098 sq. ft. in area. Conformance with the maximum permitted floor area ratio of 19.5% would be unnecessarily burdensome, as it would allow only 1,579 sq. ft. for a new residence and garage. This would be substantially smaller than the existing residence and detached garage. Due to the high groundwater in the area, and the basement problems that the existing home has had, the petitioner is not proposing to construct a basement. This will limit the amount of storage space on the property. Furthermore, as recommended, the approval of this request will require the removal of an extremely non-conforming wet boathouse from the property. The removal of the boathouse will further reduce the available storage area on the property, thus further justifying the floor area ratio and open space variances. Therefore, it is reasonable to allow some relief from the floor area ratio and open space requirements of the Ordinance, to allow more square footage to accommodate additional storage space.

Due to the limitations of the floodplain on the north side of the property and the overhead wire on the south side of the property, it would be unnecessarily burdensome on the petitioner to comply with the floodplain setback requirements. If the floodplain setback were imposed a building could only be constructed that is approximately 30 ft. deep by 30 ft. wide. This would not allow room for an attached garage nor a deck or patio. As conditioned, the new residence and a deck or patio would be located no closer to the floodplain than the existing residence and deck.

It should be noted that due to the location of the overhead wire, the petitioners may consider constructing a detached garage rather than the attached garage. If the road right-of-way width of Jaeckles Dr. is reduced by the Town Plan Commission and the Waukesha County Park and Planning Commission, there should be enough room for the construction of a detached garage while conforming with the required road setback and the setback from the overhead line.



The approval of this request with recommended conditions will allow the owner to use the property for the permitted purpose and will permit the construction of a residence and an attached garage or a detached garage that will be appropriately sized for the lot, and will not be detrimental to the surrounding neighborhood or contrary to the public interest. Furthermore, the approval of this request will result in the removal of an extremely non-conforming wet boathouse. Therefore, the approval of this request, as recommended, is in conformance with the purpose and intent of the Ordinance.

**BA09:014 JOHN AND BARB BENDALL (Owners)**

**ROB MILLEN (Contractor):**

Ms. Weber

*I make a motion to **approve** the request for an after-the-fact shore setback variance to permit the stone retaining walls to be retained, and to **approve** the request for an after-the-fact variance from the wetland/conservancy setback requirement to permit the 10 ft. x 13.2 ft. storage shed to be retained in its current location, subject to the following conditions:*

- 1. The stone retaining walls must be screened from the lake by vegetation. This may be accomplished by the placement of plantings in front of the retaining walls and/or by the placement of plantings above the retaining walls that will cascade over the top of the retaining walls.*
- 2. A Landscape Plan showing how the stone retaining walls will be screened from the lake by vegetation must be prepared by a registered landscape architect and submitted to the Planning and Zoning Division staff for review and approval, no later than **October 15, 2009**.*
- 3. A Grading Plan showing the current grades and the location of the stone retaining walls and indicating the approximate grades on the property prior to installation of the stone retaining walls, along with an estimate, in cubic yards, of the amount of soil that was relocated in conjunction with the installation of the stone retaining walls, must be prepared by a registered landscape architect or a professional engineer and submitted to the Planning and Zoning Division staff, no later than **October 15, 2009**. Upon receipt of the Grading Plan, the Planning and Zoning Division staff shall make a determination as to whether the grading that occurred in conjunction with the installation of the stone retaining walls requires a Minor Grading Permit or a Conditional Use Permit for earth-altering and advise the petitioners accordingly. The petitioners must then submit either an after-the-fact application for a Minor Grading Permit or a Conditional Use Permit for earth-altering, whichever is applicable, no later than **December 1, 2009**.*

4. *The approved Landscape Plan must be implemented no later than **June 15, 2010**. If the petitioners have a problem meeting any of the deadlines noted above, they may submit a request for an extension, outlining the reasons why they cannot comply with the deadline, to the Planning and Zoning Division staff. If the Planning and Zoning Division staff finds valid reasons for an extension, they may establish new deadlines.*

*The reasons for granting a shore setback variance to allow all of the stone retaining walls to remain are that the property is very steeply sloped and it has been demonstrated that the retaining walls are necessary. The uniqueness of the property created by the topography of the land creates a burden and a hardship upon the petitioners if they are required to remove the stone retaining walls. The reasons for granting a wetland/conservancy setback variance to permit the 10 ft. x 13.2 ft. shed to remain in its current location are as stated in the Staff Report.*

*I also move to **deny** a variance from the shore setback requirement to permit a patio on the lake side of the residence, but to **approve** variances from the floodplain setback requirement to permit a patio on the lake side of the residence and to permit the proposed replacement of the existing elevated deck on the lake side of the residence, and to **approve** the request for a variance from the requirement of the Waukesha County Shoreland and Floodland Protection Ordinance that stairs in the 75 ft. shore setback area cannot exceed three (3) ft. in width, to permit the construction of four (4) ft. wide stairs along the west side of the residence, as recommended by the staff, subject to the conditions stated in the Staff Report, and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for an after-the-fact variance from the shore setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the stone retaining wall closest to the lake and the uppermost stone retaining wall to be retained. However, the Planning and Zoning Division staff recommended **approval** of the request for an after-the-fact variance to permit the middle stone retaining wall to be retained and **approval** of the request for an after-the-fact variance from the wetland/conservancy setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the 10 ft. x 13.2 ft. storage shed to be retained in its current location, subject to the conditions noted below.

1. A significant portion of the stone retaining wall that will remain must be screened from the lake by vegetation. This may be accomplished by the placement of plantings in front of the retaining wall and/or by the placement of plantings above the retaining wall that will cascade over the top of the retaining wall.

2. A Landscape/Restoration Plan showing how the stone retaining wall that will remain will be screened from the lake by vegetation and how the disturbed area will be restored and re-vegetated following removal of stone retaining wall closest to the lake and the uppermost stone retaining wall must be prepared by a registered landscape architect and submitted to the Planning and Zoning Division staff for review and approval, no later than **October 15, 2009**.
3. If the above-required Landscape/Restoration Plan requires the addition of any fill, the petitioners must obtain either a Minor Grading Permit or a Conditional Use Permit, whichever is applicable, prior to removal of the stone retaining wall closest to the lake and the uppermost stone retaining wall.
4. Prior to the issuance of an after-the-fact Zoning Permit for the middle stone retaining wall and for the 10 ft. x 13.2 ft. metal shed, the stone retaining wall closest to the lake and the uppermost stone retaining wall must be removed, the disturbed area must be restored and re-vegetated in accordance with the approved Landscape/Restoration Plan, and the vegetation that will screen the remaining stone retaining wall from the lake must be installed in accordance with the approved Landscape/Restoration Plan. This must occur no later than **June 15, 2010**. If the petitioners have a problem meeting the deadline of June 15, 2010, they may submit a request for an extension, outlining the reasons why they cannot comply with the deadline, to the Planning and Zoning Division staff. If the Planning and Zoning Division staff finds valid reasons for an extension, they may establish a new deadline for compliance with this condition.

The Planning and Zoning Division staff's recommendation was for **denial** of a variance from the shore setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance for a patio on the lake side of the residence, but **approval** of variances from the floodplain setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance to permit a patio on the lake side of the residence and to permit the proposed replacement of the existing elevated deck on the lake side of the residence, subject to the conditions noted below. The Planning and Zoning Division staff also recommended **approval** of the request for a variance from the requirement of the Waukesha County Shoreland and Floodland Protection Ordinance that stairs in the 75 ft. shore setback area cannot exceed three (3) ft. in width, to permit the construction of four (4) ft. wide stairs along the west side of the residence, subject to the conditions noted below:

1. The elevated deck must be constructed in accordance with plans submitted with the application.
2. Any patio to be installed on the lake side of the residence must conform with the minimum shore setback requirement, i.e., it must be at least 35.1 ft. from the lake.
3. Prior to the issuance of a Zoning Permit for any patio that will extend closer to the lake than the elevated deck, a Plat of Survey showing the staked-out location of the proposed patio, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. The wetland/conservancy setback variance applies only to the existing 10 ft. x 13.2 ft. metal storage shed. Any new or replacement sheds or accessory buildings must conform with the required wetland/conservancy setback, unless an additional wetland/conservancy setback variance is granted by the Waukesha County Board of Adjustment.

5. The stairs to be installed on the west side of the residence shall be no more than four (4) ft. wide. If desired, the stairs may extend beyond the lake side of the residence, but no portion of the stairs, including any landings, may exceed four (4) ft. in width.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Further, the unnecessary hardship cannot be self-created or financial. In addition, unique physical conditions must exist on the property that prevent compliance with the Ordinance requirements, thereby causing a hardship and/or no reasonable use. Finally, it must be demonstrated that granting of the requested variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties or the natural resources in the area.

Although the middle stone retaining wall is slightly longer than the retaining wall it replaced, it does not represent a significant expansion of the previously authorized retaining wall, it is not contrary to the public interest/welfare, and it is short enough that it can be effectively screened from the lake with vegetation, as recommended above. Further, the existence of the previously approved retaining wall is a unique physical condition and it is felt that some type of retaining wall is needed near the residence in order to provide even a small level area in the area immediately adjacent to the lake side of the residence. Therefore, it would be unnecessarily burdensome to require the middle stone retaining wall to be removed. However, it has not been demonstrated that removal of the stone retaining wall closest to the lake or the uppermost stone retaining wall would result in an unnecessary hardship that is not self-created or financial. Although the property is steeply sloped, the Planning and Zoning Division staff believes that the stone retaining wall closest to the lake and the uppermost stone retaining wall are not necessary for erosion and sediment control and that the slope could be stabilized with vegetation. The encroachment of the 10 ft. x 13.2 ft. shed into the 75 ft. wetland/conservancy setback is extremely minor (approximately 5 ft.) and requiring relocation of the shed to conform with the wetland/conservancy setback requirement would be an unnecessary hardship and would serve no useful purpose. Therefore, it would not be in conformance with the purpose and intent of the Ordinance to grant the requested shore setback variances to permit all three of the stone retaining walls to remain, but with the conditions recommended above, granting a shore setback variance to permit the middle stone retaining wall to remain and granting a wetland/conservancy setback variance to permit the 10 ft. x 13.2 ft. shed to remain in its current location would be in conformance with the purpose and intent of the Ordinance.

No hardship has been demonstrated to justify granting a shore setback variance for a patio. The proposed elevated deck, which is minimal in depth, conforms with the shore setback requirement and its encroachment into the floodplain setback area, if any, would be insignificant. Similarly, any patio that conforms with the shore setback requirement, as recommended above, would also be minimal in depth and have an insignificant encroachment, if any, into the floodplain setback area. Finally, the proposed stairs are necessary to safely traverse the steep slope and are not contrary to the public interest/welfare. Therefore, the approval of floodplain setback variances to

permit the proposed replacement and enlargement of the existing elevated deck on the lake side of the residence and to permit a patio on the lake side of the residence, as well as the approval of a variance from the requirement that stairs in the 75 ft. shore setback area cannot exceed three (3) ft. in width, to permit the construction of four (4) ft. wide stairs along the west side of the residence, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA09:028 LANCE AND JENNIFER GILBERT (Owners)**

**DEBORAH GROSKOPF, GROSKOPF CONSTRUCTION, INC. (Contractor)**

**MATT HEATON (Architect):**

Ms. Bonniwell

*I make a motion to **approve** the request for a floor area ratio variance to permit the interior of the residence to be restored with a full second floor, as proposed, subject to the conditions recommended in the Staff Report, with Condition No. 3 revised to read as follows:*

*“The second floor of the residence will be permitted to be restored, as proposed. The finished living area on the second floor may include all of the area above the attached garage. This will result in a total floor area of approximately 1,836 sq. ft. and a floor area ratio of approximately 32.2%.”*

*The reasons for the decision are as follows:*

*The house has been totally gutted and the applicants need to restore it so that it can be a usable structure. The proposed restoration will not increase the footprint of the structure, which will allow the open space to remain the same and allow a reasonable use of the property. The very small lot size precludes conformance with the floor area ratio requirement. Conformance with the maximum permitted floor area ratio of 19.5% would permit a total floor area of approximately 1,110 sq. ft. Since the existing residence has a first floor area, including the covered porch and the attached garage, of approximately 989 sq. ft., a floor area ratio of 19.5% would permit only approximately 121 sq. ft. on the second floor. That would be unnecessarily burdensome, as it would result in a smaller second floor than was originally permitted. The proposed restoration will not adversely affect the general public interest/welfare or be detrimental to nearby properties or the natural resources in the area. Therefore, approval of the requested floor area ratio variance to allow the proposed restoration of the residence is in conformance with the purpose and intent of the Ordinance.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the restoration of the residence, as requested, with a full second

floor. However, the Planning and Zoning Division staff recommended **approval** of a variance from the floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the residence to be restored with a partial second floor, subject to the following conditions:

1. There shall be no expansion of the exterior walls of the building.
2. The covered porch on the road side of the residence may remain.
3. The second floor of the residence will be permitted to be restored, but it may not extend into the area that was shown as “open to below” on the approved plans on file with the Zoning Permit issued for the construction of the residence in 1996. The finished living area on the second floor may include all of the area above the attached garage. This will result in a total floor area of approximately 1,495.5 sq. ft. and a floor area ratio of approximately 26.3%.
4. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. In addition, unique physical conditions, which are not self-created, must exist on the property that prevent compliance with the Ordinance requirements, thereby causing a hardship and/or no reasonable use. Finally, it must be demonstrated that granting of the requested variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties or the natural resources in the area.

Conformance with the maximum permitted floor area ratio of 19.5% would permit a total floor area of approximately 1,110 sq. ft. Since the existing residence has a first floor area, including the covered porch and the attached garage, of approximately 989 sq. ft., a floor area ratio of 19.5% would permit only approximately 121 sq. ft. on the second floor. That would be unnecessarily burdensome, as it would result in a smaller second floor than was originally permitted. However, variances should grant only the minimum relief necessary for a reasonable use of the property. Although the Planning and Zoning Division staff understands the desire of the current owners to restore the second floor of the residence to the size enjoyed by the previous owner, that configuration resulted from remodeling done by that previous owner without permits and it is not in conformance with the floor area ratio variance that was granted in 1996 and will result in a floor area ratio that is larger than the floor area ratio on most other properties in the area.

While the proposed construction would not change the exterior dimensions of the residence and therefore would not adversely affect the general public interest/welfare or be detrimental to nearby properties or the natural resources in the area, that alone is not sufficient justification for granting the requested floor area ratio variance. Further, although the physical condition of the residence is such that it could easily accommodate a complete second floor build-out, that physical condition was self-created by the previous owner and does not justify granting the requested variance. Therefore, approval of the requested floor area ratio variance to permit the restoration of the residence with a full second floor would not be in conformance with the purpose and intent of the Ordinance, but the approval of a floor area ratio variance to allow the restoration of the residence with a partial second floor, with the recommended conditions, would be in conformance with the purpose and intent of the Ordinance.

**BA09:029 JOE AND LINDA OPITZ (Owners)**  
**MIRACLE HOMES, INC. (Contractor):**

Note: The Notice of Public Hearing indicated the proposed residence and attached garage would require variances from the road setback, floor area ratio, and open space requirements. However, it was subsequently determined that when the road setback averaging provision of the Ordinance is utilized, the proposed residence and attached garage is in conformance with the road setback requirement and does not require a road setback variance. Therefore, the Board of Adjustment took no action regarding a road setback variance.

Mr. Schmidt

*I move to **approve** variances from the floor area ratio and open space requirements to permit the construction of a new residence and attached garage, subject to the conditions recommended in the Staff Report, with the elimination of Condition No. 1 because it is not necessary and with Condition No. 2 revised to read as follows:*

*“The total floor area of the new residence, including the first and second floors or the residence, the attached garage and any proposed covered porches, but not any finished living area in the exposed basement, must not exceed 2,318 sq. ft. The footprint of the new residence and attached garage must not exceed 1,650 sq. ft., with the first floor of the residence having a minimum floor area of 850 sq. ft. and the garage having a minimum floor area of 400 sq. ft. This will result in a floor area ratio of approximately 24.8% and approximately 7,700 sq. ft. of open space.”*

*The reasons for the decision are as follows:*

*The variances, as granted, will provide a reasonable use of the property. The lot is extremely small in size and to build a reasonable home, as approved, would provide a reasonable use of the property that is not unnecessarily burdensome. The variances, as granted, meet the spirit and intent of the Ordinance, will not adversely affect the adjacent properties, and will not be contrary to the public interest. Therefore, due to the uniqueness*

*of the property and the unreasonable hardship thereby created, approval of the floor area and open space variances, as conditioned, meets the spirit and intent of the Ordinance.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the requested variances from the road setback, floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of the proposed residence, attached garage and deck. However, the Planning and Zoning Division staff recommended **approval** of variances from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a modified version of the proposed residence, attached garage, deck, and patio, subject to the following conditions:

1. The new residence, attached garage and deck, as well as any proposed patios, must conform with all locational requirements of the Ordinance. *Note: This will require the residence and attached garage to be at least 40 ft. from the edge of the 20 ft. wide platted right-of-way of Road "B" and at least 35 ft. from the edge of the 30 ft. wide established road right-of-way of Road "B" (the base setback line).*
2. The total floor area of the new residence, including the first and second floors or the residence, the attached garage and any proposed covered porches, but not any finished living area in the exposed basement, must not exceed 2,100 sq. ft. The footprint of the new residence and attached garage must not exceed 1,600 sq. ft., with the first floor of the residence having a minimum floor area of 850 sq. ft. and the garage having a minimum floor area of 400 sq. ft. This will result in a floor area ratio of approximately 22.5% and approximately 7,750 sq. ft. of open space.
3. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the proposed new residence, attached garage and deck, and any proposed patio, in conformance with the above conditions and with at least two corners of the residence staked in the field, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. The new residence must be designed to fit into the existing topography as much as possible, with minimal grade changes and with no retaining walls located within 5 ft. of the side lot lines or within 75 ft. of the lake.
6. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and



mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 4.

7. The non-conforming shed and patio near the lake must be removed, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A hardship exists with respect to open space, since it is not possible to achieve the minimum required open space of 10,500 sq. ft. on a lot that is only 9,350 sq. ft. in area. Conformance with the maximum permitted floor area ratio of 19.5% would also be unnecessarily burdensome, as it would allow only 1,823 sq. ft. for a new residence and garage, which is less than the floor area of the existing residence and garage. Conformance with the road setback requirement would not be unnecessarily burdensome, since compliance with the road setback requirement would require only that the new residence and garage be located an additional 1.2 ft. farther from the road than proposed. Therefore, no hardship has been demonstrated with respect to road setback.

Variances, however, should grant only the minimum relief necessary for a reasonable use of the property and it is felt that the proposed residence and attached garage are too large for the size of the lot and would not be in keeping with other homes and garages in the neighborhood. A smaller residence and attached garage, as recommended, would still provide a reasonable use of the property that is not unnecessarily burdensome. Further, if the petitioners desire more living space, they have the option of adding additional finishing living area in the exposed basement level that would not be counted against the floor area ratio or open space requirements. As recommended, the new residence and attached garage will not adversely affect the adjacent properties or the lake and it will not be contrary to the public interest.

Therefore, the approval of the requested variances from the road setback, floor area ratio and open space requirements to permit the construction of the proposed residence, attached garage and deck would not be in conformance with the purpose and intent of the Ordinance, but the approval of variances from the floor area ratio and open space requirements to permit the construction of a modified version of the proposed residence, attached garage, deck, and patio, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

## **MISCELLANEOUS:**

### **BA07:069 PAUL AND SUSAN BOEMER:**

A memo from Dick Mace, Planning and Zoning Manager, regarding a condition imposed by the Board of Adjustment on private road setback and shore setback variances for a detached garage that were granted on October 24, 2007 and modified on August 27, 2008, which required an offset for the

detached garage that was in excess of the minimum offset requirement, was distributed to the Board. Since the memo was distributed for information purposes only, the Board took no action regarding this matter.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**APPROVE THE ATTENDANCE OF BOARD OF ADJUSTMENT MEMBERS AT A ZONING BOARD OF APPEALS AND ADJUSTMENT WORKSHOP**

Mr. Dwyer *I move to approve the attendance of Linda Weber at the Zoning Workshop for Boards of Adjustment/Appeals sponsored by the Center for Land Use Education, the UW-Extension Washington County, the Wisconsin County Code Administrators, and the Wisconsin Department of Natural Resources, to be held in Slinger, Wisconsin, on September 24, 2009.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

**ADJOURNMENT:**

Mr. Schmidt *I make a motion to adjourn this meeting at 10:30 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Nancy M. Bonniwell  
Secretary, Board of Adjustment